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SEP 27 1996
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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)
)
Preemption of Local Zoning)
Regulation of Satellite Earth)
Stations)

IB Docket No. 95-59 ✓

In the Matter of)
)
Implementation of Section 207 of)
the Telecommunications Act of)
1996)

CS Docket No. 96-83

Restrictions on Over-the-Air)
Reception Devices:)
Television Broadcast Service and)
Multichannel Multipoint)
Distribution Service)
)
)

COMMENT TO RESTRICTIONS
ON OVER-THE-AIR RECEPTION DEVICES

We have represented community associations, including many condominium associations, for the past fifteen years. During that time, we have seen local, state and federal regulations erode the integrity of covenants, conditions and restrictions which the governing boards attempt to enforce in order to preserve and protect the property values and homeowner expectations. Most of these regulations, however, are enacted to remedy a safety concern or to

protect the alienability of the homeowner's property. We cannot recall an instance when a regulation was enacted in order to further commercial interests, such as, in this instance, the satellite dish companies.

The August 6, 1996 Order regarding restrictions on Over-the-Air Reception Devices is very confusing. At first glance, it was not entirely clear whether the Order applied to condominium developments. Planned developments consisting of single family residences should be treated differently from condominium developments. Condominium developments should be exempted from the Order because of the manner in which the Common Area property is owned. In a planned single family residential development, the owner is responsible for the maintenance of his/her residence and lot. Additionally, many more options exist for the placement of a satellite dish where the dish cannot be seen by neighbors. There are also devices available which can camouflange the appearance of a dish located at ground level.

In a condominium complex, the owners own an undivided interest in the Common Area, consisting typically of all perimeter walls, the roof, the parking lots and the landscape areas. The association is responsible for maintaining all of these areas. Any alterations created by an individual homeowner can void warranties, increase insurance premiums, create safety hazards, make the association's maintenance responsibilities more expensive, and decrease another homeowner's property value and limit marketability of other units in the complex.

We have tried cases in the State Courts seeking injunctive orders requiring a homeowner who has altered the appearance of his/her unit, exclusive use common area or common area to return the property to its original condition. The Courts have recognized the importance of enforcing covenants, conditions and restrictions in order to protect the property values and expectations of homeowners. Without this recognition, covenants, conditions and restrictions would have become meaningless documents, resulting in a negative

impact on the development. Owners have a right to rely on the plan contemplated for the development when they purchased.

At the very least, the Commission's regulation should contain provisions protecting the right of an association's governing body to regulate the placement of satellite dishes. The dishes should not be visible to other homeowners or from the street. The dishes should not be installed on or attached to common area property.

The competing issues surrounding this regulation should be carefully examined. The primary advocates of the current regulation are the satellite dish sellers and installers and not many of the homeowners. The regulation has not been enacted for a safety purpose and certainly not to enhance property values or protect the environment. The regulation only furthers commercial interests and the right of a few persons to access more stations. We do not believe that this purpose overrides the right of homeowners to rely on covenants, conditions and restrictions which protect their property values.

Dated: September 26, 1996


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A Member of
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